

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE
COMMISSION and UNITED STATES OF
AMERICA,

Plaintiffs,

v.

CHRISTOPHER E. CURRAN,

Defendant.

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RACHEL P. KOVNER, United States District Judge:

Defendant Christopher Curran has filed a motion seeking to vacate an award of disgorgement and prejudgment interest against him. *See* Feb. 9, 2023 Order; Curran Ltr. (Dkt. #155). As explained below, Curran’s motion is denied because it is untimely.

BACKGROUND

I assume the parties’ familiarity with the prior proceedings. Curran accepted the facts summarized below, which are drawn from the complaint, as part of a consent judgment. *See* J. as to Christopher E. Curran ¶ 3 (Dkt. #87).

Curran participated in a Ponzi scheme that obtained approximately \$415 million from more than 5,000 investors. Compl. ¶¶ 1-2 (Dkt. #1). His role included selling investment contracts that falsely represented how investors’ funds were being used. *Id.* ¶¶ 2, 33–35.

The SEC brought suit against Curran and his co-defendants on June 12, 2012. *See* Compl. The complaint charged Curran with violating (i) Section 15(a) of the Exchange Act, 15 U.S.C. § 78c(a)(1), Compl. ¶¶ 112–15, and (ii) Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), Compl. ¶¶ 116–19.

Curran consented to a judgment against him that provides that “the Court shall determine whether it is appropriate to order disgorgement” or “a civil penalty,” and, “if so, the amount(s) of the disgorgement and/or civil penalty.” *See* J. as to Christopher E. Curran 3. The SEC then moved for disgorgement, civil penalties, and prejudgment interest. *See* Mot. for Damages (Dkt. #132). Magistrate Judge Locke issued a report and recommendation (“R. & R.”) recommending an award of disgorgement, a civil penalty, and prejudgment interest against Curran. *See* R. & R. (Dkt. #142).

On February 9, 2023, the Court adopted Magistrate Judge Locke’s R. & R. in full and entered a final order awarding disgorgement of \$208,933.52, a civil penalty of \$65,000, and prejudgment interest of \$53,788.01 against Curran. *See* Feb. 9, 2023 Order.

On December 5, 2023, Curran filed the instant motion to “vacate and set aside” the awards of disgorgement and prejudgment interest against him. *See* Curran Ltr. 1. Curran relies on *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023), in which the Court of Appeals held that a district court must make a prerequisite finding of pecuniary harm to investors before it can order disgorgement, *see id.* at 94. He alleges that this new authority precludes the Court’s earlier order of disgorgement and prejudgment interest against him. Curran does not move to vacate the award of a civil penalty against him.

The SEC opposes the motion, arguing that it is untimely and would also fail on the merits.

LEGAL STANDARD

Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may relieve a party from a final judgment, order, or proceeding for any of the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has

been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). In general, “a movant bears the burden in Rule 60(b) motions.” *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 53 (2d Cir. 2021).

DISCUSSION

Curran’s motion to vacate the award of disgorgement and prejudgment interest is time-barred.

I. Curran’s motion to vacate the judgment is governed by Rule 60(b)(1).

Though Curran’s motion does not explicitly invoke Rule 60(b), that rule governs the relief that he seeks. Rule 60(b) permits a district court to “relieve a party or its legal representative from a final judgment, order, or proceeding” based on “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b). This includes relief based on a “district court’s mistake in law.” *Leonard v. Lowe’s Home Ctrs.*, 83 F. App’x. 402, 403 (2d Cir. 2003). Mistakes of law, in turn, include errors brought to light by new authority. *See Tarkington v. U.S. Lines Co.*, 222 F.2d 358, 360 (2d Cir. 1955) (holding that a motion for a new trial based on a conflict between a district court ruling and a subsequent Supreme Court decision should be construed as a Rule 60(b) motion to vacate based on mistake of law).

Even when a party does not move under Rule 60(b)(1), motions to vacate based on judicial mistake must ordinarily be adjudicated under that rule. *Leonard*, 83 F. App’x. at 403 (holding that a notice of appeal based on the impact of a new authority should have been treated as a Rule 60(b)(1) motion to vacate based on the district court’s mistake in law); *Canouse v. Protex Mobility, Inc.*, No. 22-1335-CV, 2023 WL 3490915, at *3 n. 2 (2d Cir. 2023) (“[A] Rule 60(b) motion premised on a court’s purported legal errors must typically be brought under Rule 60(b)(1).”). For instance, a party seeking to vacate a decision based on a mistake of law cannot

proceed under the catch-all provision concerning “any other reason that justifies relief,” Fed. R. Civ. P. 60(b)(6). *See Stevens v. Miller*, 676 F.3d 62, 67 (2d Cir. 2012) (“Rule 60(b)(1) and Rule 60(b)(6) are ‘mutually exclusive,’ such ‘that any conduct which generally falls under the former cannot stand as a ground for relief under the latter.’” (quoting *United States v. Cirami*, 535 F.2d 736, 740 (2d Cir. 1976))). Accordingly, because Curran seeks relief based on a new authority—the Court of Appeals’ recent *Govil* decision—his motion is treated as a motion to vacate based on a mistake of law under Rule 60(b)(1).

II. Under Rule 60(b)(1), Curran’s motion is time barred.

Curran’s motion is time barred. While Rule 60(b)(1) motions may generally be filed within a year of the entry of judgment, *see* Fed. R. Civ. P. 60(c)(1), “[a] Rule 60(b)(1) motion based on judicial mistake of law must be filed within the time that would be permitted for an appeal of the judgment being challenged,” *Leonard*, 83 F. App’x. at 403; *see Int’l Controls Corp. v. Vesco*, 556 F.2d 665, 670 (2d Cir. 1977); *Niederland v. Chase*, 425 F. App’x 10, 12 (2d Cir. 2011). This rule prevents a party from using Rule 60(b)(1) to press an otherwise time-barred appeal. *See In re 310 Assocs.*, 346 F.3d 31, 35 (2d Cir. 2003). Curran had sixty days to appeal a final order in this case, because it is a civil suit in which the United States is a party. *See* 28 U.S.C. § 2107(b). Because Curran’s motion was filed nearly ten months after judgment was entered, it falls outside of the permissible window to file a notice of appeal.

CONCLUSION

For the foregoing reasons, defendant's motion to vacate the February 2023 order awarding disgorgement and prejudgment interest against him is denied.

SO ORDERED.

/s/ Rachel Kovner
RACHEL P. KOVNER
United States District Judge

Dated: July 15, 2024
Brooklyn, New York